IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.235 OF 2005

Smt. Purnima Shantilal Dedhia
(Jain) & Ors. ..Petitioners.

Vs.

Municipal Corporation of Greater
Mumbai & Ors. ..Respondents.

....

Mr.G.V.Murti for the Petitioners.

Mrs.A.R.Joshi for the BMC - Respondent Nos.1 to 3.

Mr.S.G.Bhandary for Respondent No.4.

...

CORAM : DR.D.Y.CHANDRACHUD, J.

21st February, 2005.

P.C. :

This Petition has been inter alia filed in order to challenge a communication dated 5th July, 2004 addressed by the Assistant Assessor and Collector to the advocate for the Petitioners determining inter alia the arrears on account of property taxes without recording the transfer of

the property in question in the name of the Petitioners. The Petitioners have been informed that papers in relation to the transfer of the property have been remitted to the Head Office of the Municipal Corporation on 21st May, 2004 and that final orders have been awaited thereon. The property in question consists of a building known as Narmada Niwas situated on a plot of land bearing Plot No.94, Cadastral Survey No.120/74, Suparibaug Estate, and assessed to municipal taxes under No.F/S-622(15)(15A), Street No.30 AN, Chamarbaugwala Road, Parel. A warrant of attachment was issued by the Municipal Corporation on 15th December, 2001 for non-payment of property taxes and an attachment was levied on 21st January, 2002 for non-payment of property taxes, repair cess, penalty and other charges amounting to Rs.6,10,675/- for the period 1st October, 1998 to 31st March, 2002. The auction sale of the property was held on 7th March, 2003 at which the property came to be purchased by the Petitioners. On 29th March, 2004 the Municipal Corporation addressed a letter to the Petitioners confirming that the property had been sold at the public auction to the Petitioners at and for a consideration of

Rs.11,71,000/-. A similar letter is stated to have been addressed to the tenants of the building. The action of the Municipal Corporation was challenged in a writ petition before this Court in which a Division Bench in its order dated 28th April, 2003 recorded the statement of the counsel appearing on behalf of the Municipal Corporation that the auction sale had been completed and that a certificate of sale had been issued on 22nd April, 2003. The Court was also informed that the purchase price has been deposited with the Municipal Corporation. The Division Bench was of the view that, that being the position, it would not be possible for the Court to intervene in the matter. The Court was also informed that the property had been notified for auction on account of arrears of property taxes for the fourth time. The Petition was, in these circumstances, permitted to be withdrawn on the request of the counsel for the original owner, who is the Fourth Respondent to these proceedings. However, the Bench reserved liberty to the Fourth Respondent herein to take any further steps which may be available in law. It is common ground that the Municipal Corporation has issued a certificate of sale which has also been

registered. On 4th September, 2003, the Fourth Respondent has filed a suit in this Court on the original side for a declaration that the auction sale is illegal. Counsel appearing on behalf of the Fourth Respondent, however, stated in response to a query of the Court that neither has any application for interim relief been moved in the aforesaid suit, nor is there any stay. Consequential to the operation and effect of the transfer that has taken place of the title to the property in pursuance of the auction sale, the Second Petitioner wrote to the Assistant Assessor and Collector seeking mutation in the assessment bills. The Corporation has, however, not carried out consequential changes in its record to reflect the names of the auction purchasers. Counsel appearing on behalf of the Corporation states that this was because the suit which has been instituted by the Fourth Respondent is pending before the Court.

The Corporation was, in my view, clearly in error in declining to correct its records so as to give effect to the transfer of title that has taken place in pursuance of the auction sale. A

sale certificate has been issued which, it is common ground, has been registered. Even the Petition which was filed before the Division Bench was withdrawn. Though liberty has been granted by the Division Bench to the Fourth Respondent to adopt further steps which are available in law and in pursuance whereof a suit is filed before this Court, there is no order of restraint which prevents the Municipal Corporation from correcting its records. Having sold the property in auction sale, the Municipal Corporation is duty bound to take all necessary and consequential steps. If the Fourth Respondent does succeed in the suit, necessary consequences would follow in accordance with law, but unless the sale is set aside by the appropriate Court, the Municipal Corporation cannot obviously raise the mere pendency of the suit as ground for not carrying out necessary changes in its records, in pursuance of the sale which it has conducted.

In the circumstances, this Petition is disposed of by directing the Municipal Corporation to carry out the necessary changes in the assessment records pertaining to the property which

is sold in the course of the auction sale. It is needless to add that this would not affect such rights, if any, that the Fourth Respondent may seek to assert, in the event that the suit which is filed before this Court results in an adjudication in favour of the Fourth Respondent. The Corporation shall carry out necessary changes within a period of four weeks from today and would be at liberty to issue bills for property taxes and other statutory charges upon the auction purchasers in accordance with law.

The Petition is accordingly disposed of.